

## REMARKS

Claims 1 - 155 are present in the application. No claims have been amended or cancelled. Claims 144 - 155 have been added. Reconsideration of the claims is respectfully requested.

### **I. Telephonic Interviews**

Initially, Applicant's representative thanks the Examiner for the courtesy of granting telephonic interviews.

### **II. 35 U.S.C. § 103, Obviousness**

The Examiner has rejected claims 1 - 143 under 35 U.S.C. § 103 as being unpatentable over Huberman (US Patent Number 5,826,244). This rejection is respectfully traversed.

## **Background**

The present invention relates to an electronic futures exchange for trading services contracts. While spot and forward contracts may be traded on the present electronic exchange, the present claims are directed solely to trading of service futures contracts.

### **The present claims are directed to a contract for "Service":**

A service might best understood by contrasting it with a physical commodity. A commodity is a tangible good or "thing" that can be bought and sold. A commodity can be the subject of an ownership contract to be delivered to a buyer on a predetermined future date. In a commodity futures exchange that date is the delivery date. The buyer must take delivery on that date of the value of the commodity declines to the buyer. However, because a commodity is a "thing," and completely independent of its origin, a commodity always has some residual value, even after its delivery date. A "service," on the other hand, is not a physical "thing" but more of an act, action, deed or performance

to be executed. Because a service is a performance to be executed, and not a physical thing, the execution of a service relies on some infrastructure being availability for executing the service. Similar to a commodity, a buyer can contract for the performance of a service on some future execution date. However, if the buy does not take delivery of the service on the execution date, the service has absolutely no value because the infrastructure is no longer available to the buyer past the execution date.

Huberman's "automated brokered auction" for printing products provides a network for auctioning "things," i.e. documents, to bidders based on terms provided by the customer. To be sure, the document products are custom products which require Huberman's automated broker to convey a variety of printing information to the supplier, but in the end, the customer is buying a "thing," albeit a customized thing.

Therefore, the rejection of claims 1 - 155 under 35 U.S.C. § 103 has been overcome.

**The present claims are directed to a "Futures Exchange" for trading service contracts:**

By reading the specification of the present application, one would readily understand that the art is typified by several distinct types of markets": cash, either spot or forward, and futures. *Cash* markets are those in which the buyer of the commodity is the consumer. With regard to a cash market, the buyer of a commodity acquires a **non-transferable** contract for the commodity and immediate possession of commodity, the *cash and carry* principle. The most striking from of this is the *spot* market where the buyer acquires a **non-transferable** contract that is immediate converted to a possessory title of the commodity. *Forward* markets function on exactly on the same principle, however rather than taking immediate possession of the commodity, conversion to a possessory title of the commodity occurs at a forward date. A forward contract, like a spot contract, is **non-transferable** and the buyer must take possession of the commodity. Invariably, the buyers of cash contracts are the consumers of the commodities. Thus, the

only speculators in a cash market are the producers of the commodity, because they can hold on to the commodity and sell it on the spot market, and consumers of the commodity who may buy in advance of the execution date in hopes of receiving a better price than will be available on the spot market on the execution day.

Futures markets, on the other hand, function differently. A buyer of a futures contract can convert the futures contract to a possessory title of the commodity, like a forward contract, but the futures contract itself is fully **transferable**. Therefore, anyone can speculate in a futures market, not only the producer and the consumer of the commodity, but anyone willing to speculate. A futures contract could change owners tens or even hundreds of times before it is converted to a possessory title for physical possession of commodity.

Applicable  
market

Huberman does not teach or suggest a futures market for buying and selling document product nor for buying and selling document services. Instead, Huberman's automated brokered auction for printed products by simultaneously executes processes representing a customer, a supplier, and a broker process capable of serving as an intermediary between the customer and supplier processes. A customer or supplier process submits a bid on a proposed printed and a broker process attempts to establish a price for the object being bid on the documents and, if a price can be established, establishes the price. Once the price is established, the broker process proposes a transaction wherein the documents are to be provided at the established price. If the proposed transaction is accepted by both parties, the transaction can proceed automatically.

Nowhere does Huberman teach or suggest any market mechanism in which a buyer acquires a transferable contract for a commodity, much less for a service. Instead, much of Huberman's disclosure is directed to a broker mechanism in which the customer is afforded one or more fail-safe mechanisms for acquiring document products from suppliers and avoiding entering into an unfavorable transaction if the auction results prove unsatisfactory (col. 3, lines 52 - 67 and col. 4, lines 1 - 30). In practice,

Huberman's automated brokered auction seems rather customer biased, in that the broker receives a bid and job requirements for the documents and passes the terms onto prospective suppliers for acceptance (col. 4, lines 45 - 67 to col. 5, lines 1 - 31). The customer is given various means to affirm responses from suppliers prior to being bound. However, once bound to a contract, Applicant's representative cannot find any mention that the contract might be transferable. In fact, given the custom nature of the printed products being bid on, transferability would be virtually impossible. The terms presented by one customer to the automated broker are whole different from another customer's terms because the printed products needed by the customer's are different. Huberman's automated brokered auction is no more than a prior art *forward* market where the customer acquires a **non-transferable** contract, in which conversion to a possessory title of the documents occurs at a forward date dictated by the terms of the customer's bid.

Moreover, since Huberman's document contracts are **non-transferable**, speculators cannot participate in the bidding and, unlike a true futures contract that could change owners several to hundreds of times before the execution of the contract, only one transfer occurs in Huberman's auction system.

Claims 1 - 155 are directed to a FUTURES EXCHANGE for SERVICE CONTRACTS and not the mere selling for forward contracts, therefore the rejection of claims 1 - 155 under 35 U.S.C. § 103 has been overcome. Furthermore, claims 32, 34, 37, 42, 44 66, 78, 81, 86, 88, 91, 95, 121, 133, 136, 141, 143, 144, 147, 148, 150 - 152 and 155 recite, *inter alia*, that the service contract is a transferable contract, and/or speculation in the market, therefore those claims are allowable for the additional reason.

**Absolute and instant perishability of services:**

Services differed from commodity in one other aspect, at execution services absolutely and instantly perish. There is no residual value of a service after the execution date. When the execution date passes, the services, value drops to nothing, immediately. Commodities do not. Even prices for live cattle, generally accepted as one of the must

perishable of commodities, retain a residual value after the execution date. That make sense, the second after the execution date, the cattle are still physical things and therefore still have value. A service, one the other hand, may be nothing more than an act of performance. Therefore, if the buyer does not accept performance of the act at the appointed time and date, there is nothing physical to hold residual value. The value of the service expires, completely and instantly.

Huberman describes a market mechanism that is extremely well known. In fact, apparently Huberman's invention does not involve the market itself, but is directed to the broker process for facilitating favorable contracts for document printing. Huberman simply does not appreciate the absolute and instant perishability of services and how a market for buying and selling services would differ from a common forward contract commodity market.

Instead, Huberman's automated broker notifies potential suppliers for a job up for bid. Ordinarily the process described by Huberman might be considered a "jobber" contact where suppliers bid on a job from a customer. If the customer misses the delivery date for the documents, the documents will retain some intrinsic residual value, unlike a service. Moreover, because the customer sets the initial terms, the customer may dictated a delivery date prior to when the documents are actually needed. Thus, in strake contrast with a service, the supplier's document products are not absolutely and instantly perishable at execution. Moreover, the execution time, unlike that for services, is somewhat flexible. One of ordinary skill in the art could never be motivated to modify Huberman toward the present invention because Huberman's system seeks to provide the most favorable customer-supplier contract through a flexible bidding an execution process, rather than a market for services which are instantly perishable at execution.

Therefore, the rejection of claims 1 - 155 under 35 U.S.C. § 103 has been overcome. Furthermore, claim 149 recites, *inter alia*, that the ask price is based, at least partly, on the service having no residual value after the execution, therefore claim 149 is allowable for the additional reason.

**Royalty escrow services contract futures:**

Claims 16 - 18, 35, 39, 60, 62, 79, 83, 115, 117, 134, 117, 134, 138, 152 and 154 are directed to royalty escrow services contract futures where the producer of a service retains a royalty interest in the service. Each time the service is bought and sold, royalty is calculated based on the amount of the sale and escrowed for the service provider. Thus, service providers are encouraged to participate in the services futures exchange in a way never before possible with a prior art commodity exchange. Nowhere does Huberman even hint at such a feature.

Therefore, the rejection of claims 16 - 18, 35, 39, 60, 62, 79, 83, 115, 117, 134, 117, 134, 138, 152 and 154 under 35 U.S.C. § 103 has been overcome.

**Conjunctive service contracts:**

Claims 43, 87, 142 and 155 recite a conjunctive service contract where one service is conjunctively joined to another service to produce an entirely different service. This is not merely adding quantities of like services to fill an order amount, but the creation of a different service from two or more subpart services. For example, barge capacity from an origination port to a destination port may not be available. However, barge capacity from the origination port to a third port may be conjunctively joined to barge capacity from the third port to the destination port. Thus, the amount of barge capacity is not altered, but the service itself has been conjunctively altered.

Therefore, the rejection of claim 15 under 35 U.S.C. § 103 has been overcome.

**III. Conclusion**

It is respectfully urged that the subject application is patentable over Huberman and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: April 15, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rudolph J. Buchel Jr.', is written over a horizontal line.

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**IN THE CLAIMS:****CLAIM VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Please amend the claims as follows:

Please add the following claims:

- 1 --144. (NEW) A data processing system implemented method for implementing a  
2 service contract futures exchange, comprising:
  - 3 receiving an ask order for a transportation related service futures contract,  
4 wherein the ask order originates from a speculator, said speculator not having an  
5 ownership interest in said service futures contract;
  - 6 receiving a bid order for a service futures contract, wherein the bid order  
7 originates from a bidder;
  - 8 matching the bid order with the ask order; and
  - 9 reconciling offsetting futures positions for the bid order and the ask order.--
- 1 --145. (NEW) The method recited in claim 144 above, wherein reconciling  
2 offsetting futures positions of the bid order and the ask order comprises:
  - 3 recognizing the ask order as a short sale for a service futures contract; and
  - 4 issuing a call against said speculator for an amount equaling a price for said  
5 service futures contract.--



1 --146. (NEW) The method recited in claim 144 above, wherein the bid order is a  
2 first bid order and the ask order is a first ask order and prior to reconciling offsetting  
3 futures positions the method comprises:  
4 receiving a second bid order for a service futures contract, wherein the second bid  
5 order originates from the speculator;  
6 matching the second bid order with a second ask order, said second ask order  
7 originates from a participant having an ownership interest in said service futures contract;  
8 and  
9 wherein reconciling offsetting futures positions further comprises:  
10 transferring ownership of the service futures contract from the participant  
11 to the bidder, via the speculator's bid and ask orders.--

1 --147. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving a plurality of ask orders for service futures contracts, wherein the  
5 plurality of ask orders originate from speculators, said speculators not having an  
6 ownership interest in said service futures contracts;  
7 receiving one ask order for service futures contract, wherein the one ask order  
8 originates from a service producer, said service producer having an ownership interest in  
9 one service futures contract;  
10 receiving a plurality of bid orders for service futures contracts, wherein the bid  
11 orders originates from a plurality of bidders;  
12 matching the plurality of bid orders with both the plurality of ask orders and the  
13 one ask order; and  
14 reconciling offsetting futures positions for the plurality of bid orders and with  
15 both the plurality of ask orders and the one ask order.--

1 --148. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving an ask order for a service futures contract, wherein the ask order  
5 originates from an asker;  
6 receiving a bid order for a service futures contract, wherein the bid order  
7 originates from a bidder;  
8 matching the bid order with the ask order;  
9 holding the matching bid and ask orders;  
10 ascertaining an occurrence of time to mark to market; and  
11 reconciling offsetting futures positions for the bid order and the ask order in  
12 response to the occurrence of time to mark to market.--

1 --149. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving an ask order for a service futures contract from an asker, said ask order  
5 defining first service futures contract options for the service futures contract;  
6 analyzing said ask order for said first service futures contract options including at  
7 least an execution date and an ask price, said ask price being based both the execution  
8 date and the service having no residual value subsequent to the execution date;  
9 receiving a bid order for a service futures contract from a bidder, said bid order  
10 defining second service futures contract options for a service futures contract;  
11 analyzing said bid order for said second service futures contract options including  
12 at least an execution date and a bid price, said bid price being based both the execution  
13 date the service having no residual value subsequent to the execution date;  
14 matching the bid price of the bid order with the ask price of the ask order; and  
15 setting the value for the service based on the matching bid price for the contract.--

1 --150. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving an ask order for a service futures contract, wherein the ask order  
5 originates from an asker;  
6 receiving a bid order for a service futures contract, wherein the bid order  
7 originates from a bidder;  
8 matching the bid order with the ask order; and  
9 reconciling offsetting futures positions for the bid order and the ask order.--

1 --151. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving an ask order for a service futures contract from an asker, said ask order  
5 defining first service futures contract options for the service futures contract;  
6 displaying said first service futures contract options to participants to the  
7 transportation service futures contract futures exchange, said first service futures contract  
8 options including at least an ask price;  
9 receiving a first bid order for the service futures contract from a first bidder, said  
10 bid order defining second service futures contract options for a service futures contract;  
11 displaying said second service futures contract options to the participants of the  
12 transportation service futures contract futures exchange, said second service futures  
13 contract options including at least a first bid price;  
14 receiving a second bid order for the service futures contract from a second bidder,  
15 said second bid order defining second service futures contract options including a second  
16 bid price, said second bid price being based in the first bid price displayed by the  
17 transportation service futures contract futures exchange;  
18 matching the second bid price of the second bid order with the ask price of the ask  
19 order; and  
20 setting the value for the service based on the matching second bid price for the  
21 contract.--

1 --152. (NEW) A data processing system implemented method for implementing a  
2 transportation service futures contract futures exchange for a transportation market,  
3 comprising:  
4 receiving an ask order for a service futures contract from a service producer, said  
5 ask order defining first service futures contract options for the service futures contract  
6 including at least an ask price, a royalty owner's identity and a royalty rate;  
7 receiving a bid order for the service futures contract from a bidder, said bid order  
8 defining second service futures contract options including a second bid price, said second  
9 bid price being based in the first bid price displayed by the transportation service futures  
10 contract futures exchange;  
11 matching the bid price of the bid order with the ask price of the ask order;  
12 reconciling offsetting futures positions for the bid order and the ask order  
13 comprising:  
14 ascertaining a royalty owner's identity from the first service futures  
15 contract options;  
16 ascertaining a royalty rate from the first service futures contract options;  
17 calculating a royalty fee from the royalty rate;  
18 dispersing the royalty fee to the royalty owner;  
19 dispersing the bid price less the royalty fee to a asker of the ask order  
20 having a matching ask price; and  
21 transferring ownership of the service futures contract to a bidder of a bid  
22 order having the matching bid price.--

1 --153. (NEW) The data processing system implemented method recited in claim  
2 152, wherein the royalty owner is the service producer.--

- 1 --154. The data processing system implemented method recited in claim 152, wherein
- 2 the royalty owner is a subsequent owner of the service futures contract.--

1 --155. (NEW) The method recited in claim 1 above, wherein the bid order is the  
2 first bid order, the ask order is the first ask order and the service futures contract is a first  
3 service futures contract, the method further comprises:  
4 receiving a first ask order for a first service futures contract from a first asker, said  
5 first ask order defining first service futures contract options for the service futures  
6 contract including at least a first ask price, first execution locations and a first execution  
7 time;  
8 receiving a second ask order for a second service futures contract from a second  
9 asker, said second ask order defining second service futures contract options for the  
10 service futures contract including at least a second ask price, second execution locations  
11 and a second execution time, wherein at least a portion of the first execution locations are  
12 different from the second execution locations;  
13 receiving a bid order for third service futures contract from a bidder, said bid  
14 order defining third service futures contract options for the third service futures contract  
15 including at least a bid price, third execution locations and an execution time interval;  
16 matching the bid order to the first and second ask orders by forming conjunctive  
17 relationships between the first service futures contract options and the second service  
18 futures contract options, comprising:  
19 identifying a sequential relationship in the first execution locations and the  
20 second execution locations, that matched the third execution locations;  
21 identifying a sequential relationship in the first execution time and the  
22 second execution time, that matched the third execution time interval; and  
23 matching a sum of the first ask price and the second ask price match, to  
24 the bid price; and  
25 transferring ownership of first service futures contract and the second service  
26 futures contract based on identified conjunctive relationships between the first service  
27 futures contract options and the second service futures contract options.--